

THE HEIRS OF JOHN W. FIRTH, ET AL.

IBLA 74-274

Decided September 11, 1974

Appeal from decision of the Nevada State Office of the Bureau of Land Management denying reinstatement of oil and gas lease Nevada 066752.

Affirmed.

Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

It is proper to deny a request for reinstatement of an oil and gas lease terminated for failure to timely pay annual rental where the petitioners have not shown that their failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to lack of reasonable diligence.

APPEARANCES: Louvan Kolher, Esq., of Stockton, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE RITVO

This appeal has been filed on behalf of Louvan Kolher, Lydia Kolher and the heirs of John W. Firth from a decision of the Nevada State Office, Bureau of Land Management, dated March 20, 1974, which denied reinstatement of their oil and gas lease Nevada 066752 terminated for failure to pay timely the annual rental.

The rental was due on or before the anniversary date of the lease, February 1, 1974, in the amount of \$ 40.00. The rental was not received by the Bureau by that date.

Appellants state they posted the rental in the mail on February 1, 1974, thinking that such action was sufficient for timely payment. They contend the delay was justifiable, however, because one of the lessees is deceased and it was necessary to contact the decedent's four heirs for payment of rent. The payment was late because one of the heirs could not be reached prior to the rental due date.

Appellants have incorrectly categorized their lease termination as a forfeiture and cancellation. When payment of the annual rental for such a lease is not received on or before the anniversary date the lease terminates automatically by operation of law, as required by the Act of July 29, 1954, 30 U.S.C. § 188(1970), and the fact that such termination has occurred is merely noted by the Bureau officer and communicated to the lessee. Knight & Miller Oil Corporation, 14 IBLA 135 (1974). However, the law permits reinstatement of terminated leases under certain circumstances at the discretion of the Secretary of the Interior. In order to qualify, the lessee must establish to the satisfaction of the Secretary that his failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on his part. 30 U.S.C. § 188 (1970); 43 CFR 3108.2-1(c)(2).

This Board has held that reasonable diligence is established where it is shown that the lessee mailed the payment in sufficient time so that in the normal course of events it would have been received on or before the due date. Louis Samuel, 8 IBLA 268 (1972).

Where, as in this case, the rental is not mailed by the lessee until the due date, reasonable diligence has not been shown. We then consider whether the lessee's failure to exercise reasonable diligence was "justifiable" within the meaning of the statute.

The Board has held that failure to timely pay is "justifiable" when the lessee shows that such failure was the result of sufficiently extenuating circumstances which affected the lessee's action. Wayne L. Williston, 13 IBLA 201 (1973); John Rusiniak, 10 IBLA 74 (1973); R. G. Price, 8 IBLA 290 (1972). Negligence or inadvertence do not justify failure to pay on time since they are events within the control of the lessee. Jan R. Christensen, 15 IBLA 72 (1974). Similarly, appellants' attorney's erroneous construction of the law as to timely filing cannot justify their late payment in this case.

Where the extenuating circumstances involve illness or death, these events must be sufficiently proximate to the due date of the rental in order for them to come within the confines of "justifiable cause". Alfred B. Tyler, 13 IBLA 316 (1973); R. G. Price, *supra*. However, in the instant case appellants have only made the bare allegation of the death of one of the lessees, John W. Firth. They have not sufficiently established any proximity to the due date of the rental. Appellants have not provided the Board with the requisite information needed to deem this delay justifiable. Accordingly, we must find on the basis of the present record that the request for reinstatement was properly denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Edward W. Stuebing

Frederick Fishman

